

Kathryn Carter, #12969
Sarah M. Dietz #27457
Assistant Attorneys General
Office of the Kansas Attorney General
120 S.W. 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
Tel: (785) 296-3751
Fax: (785) 291-3699
Kate.Carter@ag.ks.gov

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**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 7**

**STATE OF KANSAS, *ex rel.*,
DEREK SCHMIDT, Attorney General,**

Plaintiff,

v.

**JUSTIN M. BOGINA, an individual
and
AUTO ACCEPTANCE CENTER CORP,
a corporation.**

Defendants.

Case No. 2017-CV-745

(Pursuant to K.S.A. Chapter 60)

ORDER OF DEFAULT JUDGMENT

COMES NOW BEFORE THE COURT, on this 26th day of January, 2018, Plaintiff's Motion for Default Judgment. This matter was continued to this date on January 5, 2018. Plaintiff, State of Kansas, *ex rel.* Derek Schmidt, Kansas Attorney General, appears by and through counsel Assistant Attorneys General Kathryn Carter and Sarah Dietz. Justin Bogina appears without counsel. Auto Acceptance Center Corp. is not represented.

Having heard the statements of the parties, reviewed the file, and being duly advised in the premises, the Court enters the following findings of fact and conclusions of law:

1. Derek Schmidt is the duly elected, qualified, and acting Attorney General for the State of Kansas.

2. The Attorney General's authority to bring this action is derived from the statutory and common law of the State of Kansas, specifically the Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.* (hereinafter referred to as the KCPA).

3. Defendant Auto Acceptance Center Corp is a Kansas For Profit Corporation with a principal place of business at 400 SE 29th, Topeka, Shawnee County, Kansas.

4. Defendant Justin Bogina is an individual and is the President and owner of Auto Acceptance Center Corp. He resides at 815 SE Dupont, Tecumseh, Shawnee County, Kansas.

5. This Court has personal and subject matter jurisdiction over this controversy pursuant to the Kansas Consumer Protection Act, pursuant to K.S.A. 50-623, *et seq.*, specifically K.S.A. 50-638(a) and venue is proper in the District Court of Shawnee County, Kansas, pursuant to K.S.A. 50-638(b).

6. On November 3, 2017, Plaintiff filed a Petition herein against Defendants, Justin M. Bogina and Auto Acceptance Center Corp ("Defendants").

7. Defendant Justin Bogina was personally served with Plaintiff's petition on November 7, 2017.

8. Defendant Auto Acceptance Center Corp was served with Plaintiff's petition by serving the President of Auto Acceptance Center Corp., Justin Bogina.

9. Defendants failed to file an answer to Plaintiff's petition within twenty-one (21) days after being served with process and have not filed an answer, as required by K.S.A. 60-212 and they are in default.

10. Plaintiff is entitled to judgment by default, and to all remedies Plaintiff has requested in the Petition, pursuant to K.S.A. 50-632.

11. Defendants in the ordinary course of business have acted as “suppliers” in Kansas, as that term is defined by K.S.A. 60-624(1).

12. Defendants in the ordinary course of business have engaged in “consumer transactions” in Kansas, as that term is defined by K.S.A. 50-624(c).

13. Defendants in the ordinary course of business have acted as “vehicle dealers” in Kansas, as that term is defined by K.S.A. 8-2401(a).

14. Defendants completed two hundred and seventy seven (277) car sales to consumers from January 2016 through December 2016 in which the contract entitled “We Owe Form” stated that the car was sold “AS-IS”, in violation of K.S.A. 50-639 and the KCPA.

15. Beginning in approximately January 2016 and through December 2016, Defendants completed two hundred and seventy seven (277) car sales to consumers representing, in boilerplate car sales contracts entitled “Buyer’s Order”, that the sale of the vehicle is “as is-not expressly warranted or guaranteed, with all faults” while simultaneously excepting the requirements of law, in lower case type, and with no specific reference to Kansas law. Each transaction was willful use, in written representations, of an ambiguity as to a material fact, and each instance is in violation of K.S.A. 50-626(b)(2) and the KCPA.

16. Beginning in approximately January 2016 and through December 2016 Defendants completed two hundred and seventy-seven (277) car sales to consumers in which a boilerplate car sales contract entitled “Buyer’s Order” was utilized that stated that the car was sold without warranties, representing that there were no implied or express warranties “except as required by law”, with no specific reference to the applicable Kansas law. Each transaction took advantage

of the inability of the consumers reasonably to protect the consumers' interests because of the consumers' inability to understand the language of the agreement, and each instance is in violation of K.S.A. 50-627(b)(1) and the KCPA.

17. On June 15, 2015, Defendants sold a vehicle to a consumer, Edward Dudley, when the vehicle had a malfunctioning fuel pump, of which the consumer was given no notice, had no knowledge, and had no ability to know. Edward Dudley incurred a financial loss of \$756.03 due to Defendants' willful failure to state or willful concealment, suppression or omission of material facts is in violation of K.S.A. 50-626(b)(3) and the KCPA.

18. On January, 15 2014, Defendants sold a vehicle to consumers Terry and Stacey Burgess when the vehicle had a faulty transmission, of which the consumers were given no notice, had no knowledge, and had no ability to know. Terry and Stacey Burgess incurred a financial loss of \$345 due to Defendants' willful failure to state or willful concealment, suppression or omission of material facts is in violation of K.S.A. 50-626(b)(3) and the KCPA.

19. On August 23, 2016, Defendants sold a vehicle to consumers Nathan and Kristen Hacker when the vehicle had a defective ball joint of which the consumers were given no notice, had no knowledge, and had no ability to know. Nathan and Kristen Hacker incurred a financial loss of \$8,000 due to Defendants' willful failure to state or willful concealment, suppression or omission of material facts is in violation of K.S.A. 50-626(b)(3) and the KCPA.

20. Consumer Nathan Hacker was a member of the military at the time of transaction described above, and a protected consumer as defined in K.S.A. 50-676(g), enhancing the civil penalty for the violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-677.

21. On or about November 30, 2016, Defendants failed to display the "Buyer's Guide" required by 16 C.F.R. 455.2 in twenty (20) vehicles being displayed and offered for sale at Defendants'

place of business at 400 SE 29th in Topeka, Kansas, thereby willfully failing to provide to consumers the material facts required to protect their rights and willfully failing to state a material fact, or the willful concealment, suppression or omission of a material fact is in violation of K.S.A. 50-626(b)(3) and the KCPA.

22. On or about September 10, 2014, and on multiple occasions thereafter, Defendants created and displayed an advertisement which stated that they would donate \$100 per vehicle to a memorial fund for Corporal Jason Harwood, for each vehicle sold through December 31, 2014. Defendants did not make contact with the memorial fund for Corporal Harwood, did not track sales for purposes of calculating the donation, did not maintain an accounting for purposes of the donation, and did not make those donations as represented. Defendants made payment to Corporal Harwood's widow on or before July 1, 2016, only after contact and the initiation of an investigation by Plaintiff. Defendants sold 97 cars to consumers during that time period when their advertising included the willful use in a written representation of a falsehood is in violation of K.S.A. 50-626(b)(2) and the KCPA.

23. On or about August 23, 2016, Defendants executed a "Pre-Repo Agreement" with consumers Nathan and Kristen Hacker when Defendants were not the entity providing financing for the vehicle, thereby willfully using a falsehood as to a material fact in regards to the authority to repossess the vehicle is in violation of K.S.A. 50-626(b)(2) and the KCPA.

24. Consumer Nathan Hacker was a member of the military at the time of transaction described above, and a protected consumer as defined in K.S.A. 50-676(g), enhancing the civil penalty for the violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-677.

25. In the course of the transaction described above, Defendants caused the consumers to waive the requirement that a creditor send a notice to cure at last twenty (20) days before repossession

pursuant to K.S.A. 16a-5-111, limiting the consumers' rights and benefits under the KCPA, in violation of K.S.A. 50-625(a), is in violation of the KCPA.

26. Consumer Nathan Hacker was a member of the military at the time of transaction described above, and a protected consumer as defined in K.S.A. 50-676(g), enhancing the civil penalty for the violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-677.

27. On or about September 2, 2016, in the course of selling a vehicle to consumer Sara Jackson, Defendants received from the consumer a trade-in vehicle, a 2008 Chevy Suburban, subject to a loan with Wells Fargo. A material term of the transaction was the agreement by Defendants to pay Wells Fargo the balance owed on the consumer's 2008 Chevy Suburban which Defendants accepted in trade, which payment Defendants failed to make. Defendants representation that they would pay the outstanding loan balance on the 2008 Chevy Suburban and repeated misrepresentations as to their payment were the willful use of falsehoods as to material facts are in violation of K.S.A. 50-626(b)(2) and the KCPA.

28. On or about July 3, 2017 Defendants "sold" to consumer James Pulley a 2010 Nissan Altima, for which Defendants provided no title to the consumer. No title was provided within sixty (60) days although Defendants represented to the consumer that it would be provided as required by K.S.A. 8-135. Defendants representations constitute the willful use, in oral representations, of a falsehood as to a material fact are in violation of K.S.A. 50-626(b)(2) and the KCPA.

29. On or about July 3, 2017 Defendants "sold" to consumer Joseph Schmidt a 2009 Chevy HHR, for which Defendants provided no title to the consumer. No title was provided within sixty (60) days although Defendants represented to the consumer that it would be provided as required

by K.S.A. 8-135. Defendants representations constitute the willful use, in oral representations, of a falsehood as to a material fact are in violation of K.S.A. 50-626(b)(2) and the KCPA.

30. Defendants' failure to provide the consumers with titles to their cars, as described in paragraphs 27 and 28, left the consumers unable to receive a material benefit from the transactions and is in violation of K.S.A. 50-627(b)(3) and the KCPA.

31. Consumer Joseph Schmidt is over the age of 60 years at the time of the transaction described in paragraph 28, and a protected consumer as defined in K.S.A. 50-676(g), enhancing the civil penalty for a violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-677.

32. The acts and practices alleged in the petition and recited herein are declared unconscionable and deceptive acts and practices, in violation of the Kansas Consumer Protection Act, pursuant to K.S.A. 50-632(a)(1).

33. Defendants are permanently enjoined from:

- a. Advertising, soliciting, performing, accepting payments for, supervising, operating or in any manner conducting any business related to the sale of property or services as defined in K.S.A. 50-624(c) within the State of Kansas, specifically from engaging in any consumer transactions.
- b. Entering into, forming, organizing or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of engaging in consumer transactions.
- c. Participating in C&H Auto Center LLC.

- d. Continuing to participate in any partnership, corporation, sole proprietorship or any other legal structures, for the purpose of engaging in consumer transactions.

34. Defendants shall pay investigative fees and expenses in the amount of \$9,191.65 to the Office of the Kansas Attorney General, pursuant to K.S.A. 50-632(a)(4).

35. Defendants are ordered to pay \$9,580,000 civil penalties for violations of the Kansas Consumer Protection Act as provided by K.S.A. 50-636.

36. Defendants are ordered to pay \$40,000 enhanced civil penalties for violations of the Kansas Consumer Protection Act against protected consumers, pursuant to K.S.A. 50-677.

37. Defendants are ordered to pay all Court costs and all costs associated with collecting, distributing and executing any judgment made by this Court.

38. Defendants are ordered to pay restitution to the following consumers in the total amount of \$25,775.89:

Edward Dudley	\$756.03
Terry and Stacey Burgess	\$345.00
Nathan and Kristen Hacker	\$8,000.00
Sara Jackson	\$16,674.86

39. Defendants are jointly and severally liable for judgment rendered herein.

IT IS SO ORDERED, ADJUDGED AND DECREED. This Order is effective on the
date and time shown by the electronic file stamp.

Bring with the check

Honorable Franklin R. Theis

Judge of the District Court

Respectfully submitted,

/s/ Kathryn Carter

Kathryn Carter KS #12969
Assistant Attorney General
Office of the Kansas Attorney General
120 S.W. 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
Tel: (785) 296-3751
Fax: (785) 291-3699
kate.carter@ag.ks.gov

/s/ Sarah M. Dietz

Sarah M. Dietz KS#27457
Assistant Attorney General
Office of the Kansas Attorney General
120 S.W. 10th Avenue, 2nd Floor
Topeka, Kansas 66612-1597
Tel: (785) 296-3751
Fax: (785) 291-3699
sarah.dietz@ag.ks.gov